

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 4, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP319-CR

Cir. Ct. No. 2014CF1474

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENDEL JABAR KING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CAROLINA STARK, Judge. *Affirmed.*

Before Brennan, P.J., Brash and Dugan, JJ.

¶1 PER CURIAM. Kendel Jabar King appeals the circuit court's judgment convicting him of possession of cocaine with intent to deliver, as a party to a crime. King argues: (1) the circuit court misused its discretion in permitting a detective to provide expert testimony about slang or coded language used in drug

transactions; and (2) there was insufficient evidence to support the conviction. We affirm.

¶2 King first argues that the circuit court misused its discretion by allowing Detective Kenton Burtch to testify as an expert about the slang or coded language King used in phone calls from the jail to refer to drugs. King contends that Burtch should not have been qualified as an expert because he had minimal experience and “had been a detective for just a few months.”

¶3 Expert testimony is allowed in the following circumstances:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if the testimony is based upon sufficient facts or data, the testimony is the product of reliable principles and methods, and the witness has applied the principles and methods reliably to the facts of the case.

WIS. STAT. § 907.02(1) (2015-16). The circuit court’s decision to allow expert testimony is discretionary. *State v. Giese*, 2014 WI App 92, ¶16, 356 Wis. 2d 796, 854 N.W.2d 687. “A circuit court’s discretionary decision will not be reversed if it has a rational basis and was made in accordance with accepted legal standards in view of the facts in the record.” *Id.*

¶4 After hearing Burtch’s testimony about his experience, the circuit court made extensive factual findings: Burtch worked as a police officer for the Milwaukee Police Department for over six years, including over four years in the anti-gang unit; Burtch became a detective six months earlier, tasked with investigating shootings that were related to drug trafficking, drug dealing, drug delivery, and drug distribution in the community; Burtch interviewed many people

regarding their involvement in illegal drugs, both drug users and people delivering or distributing drugs; Burtch observed drug dealing on numerous occasions and observed undercover operations and/or buys; Burtch worked extensively with confidential informants in undercover operations related to illegal drugs; Burtch spent six to eight months working with the Federal Bureau of Alcohol, Tobacco, and Firearms investigating marijuana, heroin, and cocaine dealing; Burtch repeatedly listened to and heard the type of language and terms used in drug dealing, both in telephone calls that jail inmates made and in conversations between confidential informants and buyers; Burtch learned common names for cocaine through his work, including: “money,” “work,” and “cheese”; Burtch keeps updated with current drug use and distribution or delivery practices by visiting websites and attending trainings; Burtch continues to increase his knowledge about terms or slang for different drugs and drug-related use or delivery practices by using internet searches for unfamiliar terms and by talking to other law enforcement organizations, confidential informants, and suspects to discern the meaning of unfamiliar slang; and Burtch has a bachelor’s degree in criminology and a master’s degree in criminal justice.

¶5 The circuit court then applied WIS. STAT. § 907.02(1) to its factual findings. First, the circuit court concluded that Burtch had specialized knowledge about slang or coded language related to drug use and/or delivery practices that would assist the trier of fact in understanding the evidence. Next, the circuit court concluded that Burtch was qualified to give testimony as an expert based on his specialized knowledge, and that his testimony would be based upon sufficient facts and data given his experience. Finally, the circuit court concluded that Burtch’s proposed testimony was not the type of testimony that needed to be

subject to peer review or scientific methods because it was gained through experience, training and education.

¶6 King does not dispute the circuit court’s factual findings. Instead, he argues that the circuit court did not apply the correct legal standard when it determined that Burtch was an expert because Burtch did not have enough experience. We reject this argument. The circuit court’s factual findings about Burtch’s experience amply support the circuit court’s conclusion that he has specialized knowledge and training in this field. Moreover, we will not second-guess the circuit court when it makes a discretionary decision where, as here, the decision has a rational basis and is made in accordance with accepted legal standards in view of the facts in the record.¹

¶7 King next argues that there was insufficient evidence to support the verdict. When reviewing the sufficiency of the evidence, we look at whether “the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (quoted source omitted). “If any possibility exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt, an appellate court may not overturn [the] verdict.” *Id.* (quoted source omitted).

¹ King also argues that Burtch should not have been allowed to testify as an expert because he did not prepare a report of his findings. King does not develop this argument, and we are aware of no legal basis for this claim. We will not consider undeveloped arguments. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶8 Agent Sarah Moskonas, who supervised King, testified that she was familiar with King based on her monthly home visits. She testified that she recognized King's clothing, a photograph of him, and other items in the bedroom where the cocaine was found during the execution of the search warrant. She also testified that there were two Wisconsin photo identifications with King's picture in the room. The State introduced audio recordings of King's jail phone calls, in which King made coded references to the drugs found in his shoes in his bedroom. Detective Burtch testified about the meaning of some of the slang terms King used in the audio recordings. Agent Moskonas identified the voice in the recordings as King's voice. Agent Moskonas's testimony tying King to the bedroom where the drugs were found, King's phone calls from jail discussing the location where the drugs were found, and Detective Burtch's testimony about the meaning of slang terms used during the phone calls are sufficient evidence to support the conviction. Therefore, we reject King's argument that there was insufficient evidence to support the verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2015-16).

